



Name of Country and Jurisdiction:
Utah, United States

- 1. What forms of legally recognized relationships are available?
- 2. What are the requirements to be able to enter into the above relationships?
- 3. Differences between marriage and civil unions and how the two sets of laws interact.
- 4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?
- 5. When a couple comes to Utah, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?
- 6. How can each form of relationship be dissolved? What is the residency requirement or other link to Utah for an authority to grant a divorce/dissolution?



1. What forms of legally recognized relationships are available?



LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LEGISLATION	AVAILABLE TO SAME-SEX COUPLE?
Marriage, registered	Utah	Utah Code Ann. § 30-1-4.1.	Yes ¹

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¹ The State of Utah's statutes and constitution do not recognize any personal relationships between same-sex couples. See Utah Code Ann. § 30-1-2 (regarding marriages); Utah Const. art. I, § 29 (regarding marriage, civil unions, and other arrangements). In 2013, in a case titled *Kitchen v. Herbert*, a federal district court in Utah held these provisions unconstitutional. On June 25, 2014, the Tenth Circuit Court of Appeals affirmed that decision. On October 6, 2014, the Supreme Court denied review in the *Kitchen* case, making the Tenth Circuit decision in *Kitchen* final. This effectively rendered same-sex marriage legal in Utah. Marriages were performed beginning on October 6, 2014.

On June 26, 2015, the United States Supreme Court issued a decision in four consolidated cases from the Sixth Circuit Court of Appeals under the name *Obergefell v. Hodges*, 576 U.S. _____ (2015), regarding same-sex marriage. The appeals arose from federal district court decisions in Michigan, Kentucky, Ohio, and Tennessee, which struck down as unconstitutional laws that denied the 14 petitioners the right to marry or refused to give full recognition to marriages lawfully performed in another state. The laws at issue in those states define marriage as a union between one man and one woman. The Sixth Circuit had reversed those decisions (in *DeBoer v. Snyder*, 772 F.3d 388 (2014)), holding that a state had no constitutional obligation to allow same-sex marriages or to recognize those performed in another state. In a 5-4 majority opinion, the U.S. Supreme Court held that the Fourteenth Amendment requires a state to license marriages between same-sex couples and to recognize lawfully performed same-sex marriages from another state. The Court held that the right to marry is protected under both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. Because the Court found that state laws at issue burden the liberty and abridge the equality of same-sex couples, they must be struck down.

LEGAL RECOGNITION FOR OPPOSITE-SEX COUPLE	GEOGRAPHY	LEGISLATION	AVAILABLE TO SAME-SEX COUPLE?
Judicially recognized marriage [common-law marriage]	Utah	Judicial recognition through the Petition to Recognize a Relationship as a Marriage.	Yes ²

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2. What are the requirements to be able to enter into the above relationships?

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(i) Geographic requirements:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	No residency requirement exists in Utah; however, a marriage in Utah cannot be solemnized without a marriage license from Utah, which can be used only within the State of Utah. Utah Code Ann. 1953 § 30-1-7. Marriages that are not solemnized can still be valid if they satisfy the criteria described in 2(ii), below.
Judicially recognized marriage	Same as marriage.

² This is a change in law after the Supreme Court decision in *Obergefell*, described above.

(ii) Other substantive eligibility criteria:

FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>Both parties to the marriage:</p> <ul style="list-style-type: none"> • Must be at least 18 years of age; or be at least 16 years of age and have the written consent of a parent or guardian; or be at least 15 years of age and have both the consent of a parent or guardian and written authorization from a juvenile court judge or court commissioner. • May not be related to each other: <ul style="list-style-type: none"> ◆ First cousins may marry if both parties are: (i) 65 or older; or (ii) 55 or older if the court finds that either party is unable to reproduce. • Must be free to marry: parties presently married and not yet divorced may not marry until after the affirmance of the final decree. <ul style="list-style-type: none"> ◆ If a marriage is performed involving a party who is not divorced but who, in good faith, believes he or she is legally divorced or that his or her spouse is dead, the marriage will be upheld. <p>All marriages must be solemnized. However:</p> <ul style="list-style-type: none"> • If a marriage is not solemnized, it will be valid if it arises out of a contract between a man and woman who: <ul style="list-style-type: none"> ◆ Are of legal age and capable of consenting; ◆ Have cohabited; ◆ Mutually assume marital rights, duties, and responsibilities; and ◆ Hold themselves out as husband and wife. • No marriage may be solemnized without a license issued by the state's county clerk. <ul style="list-style-type: none"> ◆ Licenses expire within 30 days of issuance. ◆ Only a Utah license may be used to marry within Utah. • A person who knowingly solemnizes the marriage of a minor is guilty of a third-degree felony; a person who knowingly solemnizes the marriage of two adults prohibited from marrying by law is guilty of a class A misdemeanor. • Marriages may be solemnized by ministers, rabbis, priests, the mayor, a judge, a county clerk, a Native American spiritual advisor, the Governor, court commissioners, and particular members of the legislature. • The person who solemnizes the marriage must sign and file a certificate of marriage, along with the marriage license, with the county clerk who issued the license. <p>Two witnesses over the age of 18 must be present at a wedding ceremony.</p>

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Judicially recognized marriage	<p>If parties are not married through a marriage ceremony but wish to file a petition with the court to have their relationship judicially recognized as a marriage, they must be:</p> <ul style="list-style-type: none"> • Of legal age and capable of giving consent; • Legally capable of entering into a solemnized marriage and not related to one another or presently married to another party; • Living together; • Treating each other as if they are already married; and • Presenting themselves to the public and to others so that the public believes they are married.



3. If both marriage and civil unions exist:

- (a) Identify any significant differences in eligibility; and
- (b) Briefly highlight how they interact if both are in effect (e.g., in some countries, entering into a marriage with the same or a different person automatically dissolves any civil union that the two parties were previously party to, making the latter vulnerable and potentially circumventing separation laws).
- (c) If both marriage and civil unions are available to same-sex couples, briefly highlight areas where major differences exist between marriage and civil unions (e.g., taxes, adoption, immigration, etc.).



(a)–(c)	Not applicable. Civil unions, or any other relationships other than marriages, are not recognized by the state and will not be enforced or given legal effect.
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4. What kinds of pre-existing relationships make you ineligible to enter each kind of relationship?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>If an individual is already married to the same person or a different person, he or she cannot marry again until his or her divorce is finalized.</p> <ul style="list-style-type: none"> • If, however, an individual enters into a marriage with a good-faith belief that (i) he or she is divorced or (ii) his or her spouse is deceased, the new marriage can still be declared valid. <p>If an individual is related to the person he or she seeks to marry, the individual may not marry that person unless they are first cousins and they are: (i) 65 or older; or (ii) 55 or older and a court has found that one party to the marriage is unable to reproduce.</p>

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Judicially recognized marriage	Same as marriage.

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5. When a couple comes to Utah, is their pre-existing relationship recognized? If not, is there any formalized avenue for obtaining recognition?

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FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>A marriage solemnized in any other country, state, or territory, so long as it is valid where it was solemnized, is valid in Utah unless the marriage is one that would be prohibited and declared void in Utah. This includes a marriage that is:</p> <ul style="list-style-type: none"> • Between people who are in another marriage and whose divorce is not yet finalized; • Between individuals under 18 unless consent has been obtained; • Between parties who are related to each other within and including three degrees of consanguinity.
Judicially recognized marriage	If the couple satisfies the requirements for a judicially recognized marriage (see (2)(ii)), the court may still judicially recognize their marriage, even if the relationship began or was primarily established in a foreign jurisdiction.



6. How can each form of relationship be dissolved? What is the residency requirement or other link to Utah for an authority to grant a divorce/dissolution?



FORM OF LEGAL RELATIONSHIP	REQUIREMENTS
Marriage	<p>To obtain a divorce in Utah, at least one party to the marriage must reside in a single county in Utah for at least three months immediately before filing the divorce petition.</p> <ul style="list-style-type: none"> • If custody of a minor child is at issue, the child usually must reside with one of the parents within Utah for at least six months. <p>A marriage can also be declared null and void through an annulment. Annulments are awarded to parties in relationships where:</p> <ul style="list-style-type: none"> • One person was married to someone else or had a divorce that was not yet finalized; • One person was 16 or 17 and that person's parent or guardian did not consent to the marriage; • One person was 15 and that person did not obtain consent from a parent or guardian and from a court; • The marriage was between individuals of the same sex; • The marriage was between close relatives who may not get married; • One party refuses to consummate the marriage; or • The relationship is tainted due to fraud or misrepresentation.
Judicially recognized marriage	Parties with a judicially recognized marriage may obtain a divorce decree to settle custody, child support, parent time, alimony, property, and debt division.

Sources:

- Utah Code Ann. § 30-1-2.
- Utah Code Ann. § 30-1-4.
- Utah Code Ann. § 30-1-4.1.
- Utah Code Ann. § 30-1-4.5.
- Utah Code Ann. § 30-1-13.
- Utah Code Ann. § 30-1-17.1.
- Utah Code Ann. § 30-3-1.
- Utah Code Ann. § 78B-6-117.
- Utah Const. art. I, § 29.
- *Obergefell v. Hodges*, 576 U.S. _____ (2015).

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Legal Recognition of Same-Sex Relationships

- *Kitchen v. Herbert*, 961 F. Supp. 2d 1181, 1204 (D. Utah 2013); *aff'd*, No. 13-4178, 2014 U.S. App. LEXIS 11935 (10th Cir. June 25, 2014).
- *Kitchen v. Herbert*, No. 13-4178 (D. Utah Oct. 6, 2014) (mandating judgment of June 25, 2014).
- Utah Courts, *Annulment*, available at <https://www.utcourts.gov/howto/divorce/annulment.html> (last modified Feb. 10, 2012).
- Utah Courts, *Divorce*, available at <https://www.utcourts.gov/howto/divorce/> (last modified May 2, 2014).
- Lambda Legal, *Utah*, available at <http://www.lambdalegal.org/states-regions/utah/>.
- <http://attorneygeneral.utah.gov/2014/10/06/letter-to-county-clerks-supreme-court-denial/>.

